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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/900,674

07/06/2001

Nick Nyhan

211367

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09/02/2005

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EXAMINER

VAN DOREN, BETH

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,674

Applicant(s)

NYHAN ET AL

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20020625
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The following is a non-final, first office action on the merits. Claims 1-27 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-9 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8-9 recite the limitation “the amount of time remaining in a campaign”. There is insufficient antecedent basis for this limitation in the claim. This limitation should more appropriately be --an amount of time remaining in the campaign--. Correction is required.

Claim 13 recites the limitation “modifying, based on the response, the one or more requested files so that they include a reference to a computer-readable instructions”. It is unclear as to what specifically the term “they” is referring. The limitation should more appropriately be --modifying, based on the response, the one or more requested files so that the files include a reference to a computer-readable instructions--. Correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-7, 10-11, and 13-21 are rejected under 35 U.S.C. 102(e) as being anticipated by de Ment (U.S. 6,728,755).

As per claim 1, de Ment teaches a method for conducting an on-line survey, the method comprising:

receiving a request for a block of data, the requested block of data comprising computer-readable instructions for displaying an on-line advertisement, the request originating from a computer operated by a user (See figures 2A, 2B, 3B, column 3, lines 10-35, column 4, lines 35-50, wherein a request is received from the computer for the display of an online advertisement of a survey in a pop-up window);

determining whether or not the user has previously been solicited to take the on-line survey (See figures 2A, 2B, 3B, column 3, lines 25-35, column 4, lines 40-63, wherein the system determines if the user has been previously solicited via the user's cookies); and

adding to the requested block of data, in response to the determining step, further computer-readable instructions that facilitate invoking a procedure for soliciting the user to take the on-line survey (See figures 2A, 3B, column 2, lines 1-15 and 47-60, column 3, lines 25-40, column 5, lines 35-60, wherein the instructions are invoked so that the user is solicited to take the survey).

As per claim 2, de Ment discloses computer-readable medium having stored thereon computer-executable instructions to facilitate performing the method of claim 1 (See figure 1, column 1, line 65-column 2, line 15 and lines 45-65, discussing a computer readable medium).

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As per claim 3, de Ment discloses wherein the determining step comprises: requesting cookie data from the computer; receiving a response to the request; and analyzing the data to determine whether it is associated with the on-line survey (See figure 3B, column 3, lines 25-35, column 4, lines 40-63, wherein cookie data is requested and analyzed to find any association).

As per claim 4, de Ment teaches wherein the determining step comprises: receiving cookie data from the computer; analyzing the cookie data to determine how much time has elapsed since the user was previously solicited to take the on-line survey; and comparing the elapsed time with a time parameter, wherein the adding step is performed if the elapsed time is greater than the time parameter (See figure 3B, column 3, lines 25-35, column 4, lines 40-63, wherein cookie data is requested and analyzed to see timing (i.e. has the user taken the survey within the last six months)).

As per claim 5, de Ment sending the block of data to the computer over a computer network (See figure 1, column 1, line 65-column 2, line 15 and lines 45-65, which discloses a computer network utilized).

As per claim 6, de Ment discloses soliciting the user to take the on-line survey, generating cookie data to indicate that the user has been solicited to take the on-line survey; and sending the generated cookie data over a computer network to the computer (See column 4, lines 30-61, which discloses cookie data).

As per claim 7, de Ment discloses executing the added computer-readable instructions, thereby invoking the procedure to perform the steps of: referencing a frequency parameter that indicates how frequently solicitations to take the on-line survey are to be sent to users over a computer network; and determining whether or not to display a solicitation to take the survey to

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the user based on the frequency parameter (See figure 3B and column 4, line 45-column 5, line 26, which discusses frequency).

As per claim 10, de Ment teaches carrying out the added computer-readable instructions to invoke the procedure to perform steps comprising: generating a random number; determining whether the random number falls within a range of numbers that represent the frequency with which users are to be solicited to take the on-line survey; and displaying a solicitation to take the survey to the user based on the determining step (See figures 2A-2B, column 4, line 63-column 5, line 26, which discloses a random number generated and determining, based on the number, whether to display the solicitation to the user).

As per claim 11, de Ment teaches displaying a pop-up window in response to the determining step; and in response to the user activating a link associated with the pop-up window, sending a web page to the computer, the web page comprising questions regarding a product or service advertised in the on-line advertisement (See column 2, lines 1-15 and 45-65, column 3, line 44-column 4, lines 15, column 5, lines 35-60, and figure 3B, wherein a pop-up window is displayed. The user clicks through to a survey concerning a service of the webpage).

As per claim 13, teaches a method for soliciting a user of a computer to take an on-line survey, the computer being linked to a computer network and running a browser program, the method comprising:

receiving a function call indicating that the browser has requested one or more files comprising an on-line advertisement (See figures 2A, 2B, 3B, column 3, lines 10-35, column 4, lines 35-50, wherein a request is received from the computer for the display of an online advertisement of a survey a pop-up window);

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sending a request to the browser for cookie data regarding previous attempts to solicit the user to take the on-line survey (See figures 2A, 2B, 3B, column 3, lines 25-35, column 4, lines 40-63, wherein the system determines if the user has been previously solicited via the user's cookies);

receiving a response to the request (See figures 2A, 2B, 3B, column 3, lines 25-35, column 4, lines 40-63, wherein cookie data is received);

modifying, based on the response, the one or more requested files so that the files include a reference to a computer-readable instructions for deciding whether or not to solicit the user to take the on-line survey (See figures 2A, 3B, column 2, lines 1-15 and 47-60, column 3, lines 25-40, column 5, lines 35-60); and

sending the one or more modified files to the browser over the computer network (See figures 2A, 3B, column 2, lines 1-15 and 47-60, column 3, lines 25-40, column 5, lines 35-60, wherein the files are sent over the network).

As per claim 15, de Ment teaches wherein the one or more requested files comprise computer-readable instructions for displaying the on-line advertisement, and wherein the modifying step further comprises inserting script readable by the browser into the one or more files, the script including instructions for calling a routine that decides whether or not to solicit the user to take the on-line survey based on a frequency parameter, the frequency parameter indicating the probability that users are to be selected to take the on-line survey (See figures 2A and 2B, column 2, lines 1-15 and 45-66, column 3, lines 10-35, column 4, lines 40-column 5, line 20, wherein a routine helps determine whether or not to solicit the user).

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Claims 14 and 16 recite equivalent limitations to claim 2 and 11, respectively, and are therefore rejected using the same art and rationale applied above.

As per claim 17, de Ment teaches a system for conducting an on-line survey, the system comprising:

a client computer for interacting with a user (See figure 1 and column 1, line 65-column 2, line 20, which discloses a client computer);

a web server in communication with the client computer (See figure 1 and column 1, line 65-column 2, line 20, which discloses a web server);

a survey logic server in communication with the client computer (See figure 1 and column 1, line 65-column 2, line 20 and lines 45-65, which disclose a survey logic server); and

computer-readable instructions for:

requesting a web page to be sent from the web server to the client computer, the web page including a reference to an on-line advertisement (See figures 1 and 2, column 1, line 65-column 2, line 20 and lines 25-45, which disclose requesting a webpage, such a search tool);

requesting the on-line advertisement to be sent to the client computer so that the on-line advertisement can be displayed on the on the client computer to the user (See figures 2A, 2B, 3B, column 3, lines 10-35, column 4, lines 35-50, wherein a request for an online advertisement is received, the online advertisement to entice the user to take the survey); and

deciding whether or not to consider sending a solicitation to take the on-line survey from the survey logic server to the client computer based on a stored value indicating how recently the user has been previously solicited to take the on-line survey (See figure 2B, column 2, lines 1-15

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and 47-62, column 4, lines 40-62, wherein a decision is made as to whether or not to send the survey based on when the client computer last interacted with the survey).

As per claim 18, de Ment teaches wherein the deciding step comprises analyzing cookie data of the client computer to determine how recently the solicitation to take the on-line survey was previously sent to the client computer (See figure 2B, column 2, lines 1-15 and 47-62, column 4, lines 40-62, wherein cookies are analyzed).

As per claim 19, de Ment wherein the survey logic server is in communication with the client computer by way of the web server (See figure 1 and column 1, line 65-column 2, line 20 and lines 45-65, which disclose the system).

As per claim 20, de Ment teaches wherein the deciding step further comprises:

based on the determining step, attaching script to the on-line advertisement, the script being executable by the client computer to call a routine that compares a random number to a range of numbers to determine, based on a frequency parameter, whether to send a solicitation to take the on-line survey to the client computer; and sending the on-line advertisement and the script to the client computer (See column 1, line 65-column 2, line 20 and lines 45-65, which disclose a survey logic server and scripts attached. See also figures 2B and 3B and column 4, line 60-column 5, line 27 and lines 35-55, which discusses comparing a random number).

As per claim 21, de Ment discloses determining whether the solicitation to take the on-line survey has been recently sent to the computer; based on the determining step, attaching script to the on-line advertisement, the script being executable by the client computer to call a routine at the survey logic computer that compares a random number to a range of numbers to determine, based on a frequency parameter, whether to send a solicitation to take the on-line

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survey to the client computer; and sending the on-line advertisement to the client computer (See column 1, line 65-column 2, line 20 and lines 45-65, which disclose a survey logic server and scripts attached. See also figures 2B and 3B and column 4, line 45-column 5, line 27 and lines 35-55, which discusses considering a random number and timing).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8-9 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Ment (U.S. 6,728,755) in view of Hamlin et al. (U.S. 6,477,504).

As per claims 8 and 9, de Ment teaches wherein the on-line survey is conducted and wherein the frequency parameter has a value that is at least partially a function of an amount of time, the method further comprising calculating the value of the frequency parameter according to an algorithm that includes the amount of time as an input (See figure 2B, column 4, lines 40-column 5, line 20). de Ment teaches wherein the calculating using an algorithm or by referencing a look-up table (See figure 2B, column 4, lines 40-62, wherein the value is calculated using an established computational procedure. See column 5, lines 1-22, wherein a reference table is used to determine when to display the survey).

However, de Ment does not specifically disclose that the on-line survey is conducted as part of a campaign or calculating how much time is remaining in the campaign.

Hamlin et al. discloses a marketing campaign that utilizes surveys and the system calculating frequency of the survey based on calculating how much time is remaining in the campaign (See column 6, lines 40-65, column 9, line 54-column 10, line 5, column 12, lines 45-55, column 13, lines 18-36, wherein a campaign is defined with on-line surveys and the survey is displayed based on number and duration considerations).

Both Hamlin et al. and de Ment disclose systems for soliciting a user to take an on-line survey and utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users. Hamlin et al. also discloses utilizing on-line surveys in order to gain knowledge concerning the users that take the survey and discloses specifically a defined campaign for gaining this knowledge. It would have been obvious to one of ordinary skill in the art at the time of the invention to conduct an on-line survey as part of a campaign (i.e. an operation pursued to accomplish a purpose), the campaign having a specific time period, in order to more efficiently gather information from users of the system by defining the goals and objectives of the data to be collected.

As per claim 22, de Ment teaches an on-line survey is conducted and calculating a value of the frequency parameter as a function of how much time has elapsed (See figure 2B, column 4, lines 40-62). However, de Ment does not specifically disclose that the on-line survey is conducted as part of a campaign or calculating how much time has elapsed in the campaign.

Hamlin et al. discloses a marketing campaign that utilizes surveys and the system calculating frequency of the survey based on calculating how much time has elapsed in the campaign (See column 6, lines 40-65, column 9, line 54-column 10, line 5, column 12, lines 45-

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55, column 13, lines 18-36, wherein a campaign is defined with on-line surveys and the survey is displayed based on number and duration considerations).

Both Hamlin et al. and de Ment disclose systems for soliciting a user to take an on-line survey and utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users. Hamlin et al. also discloses utilizing on-line surveys in order to gain knowledge concerning the users that take the survey and discloses specifically a defined campaign for gaining this knowledge. It would have been obvious to one of ordinary skill in the art at the time of the invention to conduct an on-line survey as part of a campaign (i.e. an operation pursued to accomplish a purpose), the campaign having a specific time period, in order to more efficiently gather information from users of the system by defining the goals and objectives of the data to be collected.

As per claim 23, de Ment teaches wherein the calculating step is performed according to an algorithm (See figure 2B, column 4, lines 40-62, wherein the value is calculated using an established computational procedure).

As per claim 24, de Ment teaches wherein the calculating step is performed by referencing a look-up table (See column 5, lines 1-22, wherein a reference table is used to determine when to display the survey).

7. Claims 12 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Ment (U.S. 6,728,755).

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As per claim 12, de Ment disclose displaying a pop-up window in response to the determining step; and in response to the user activating a link associated with the pop-up window, sending a web page to the computer, the web page comprising questions regarding a product or service (See column 2, lines 1-15 and 45-65, column 3, line 44-column 4, lines 15, column 5, lines 35-60, and figure 3B, wherein a pop-up window is displayed. The user clicks through to a survey concerning a service of the webpage).

However, de Ment does not expressly disclose that the pop-up concerns a product or service that is not advertised in the on-line advertisement.

De Ment discloses that the user is provided an advertisement for a survey via a pop-window based on the user's use of a search tool. The questions following this original invitation include questions concerning general computer use and services. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a general nature of the questions in the original pop-up in order to increase the convenience of the survey by allowing the respondent to know upfront the types of questions he/she will encounter. See column 3, line 45-column 4, line 25.

As per claims 25-27, De Ment discloses:

- i. as per claim 25, a server for maintaining data for displaying the on-line advertisement (See figures 1, 3B, column 1, line 65-column 2, line 20 and lines 45-65, column 5, lines 35-60, which disclose a server that present the user with advertisement for the survey).
- ii. As per claim 26, the server adds computer-readable instructions for invoking a decision routine to the advertisement data when it is decided that consideration is to be given to sending the solicitation to the computer (See figures 2A, 2B, 3B, column 3, lines 10-35, column

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4, lines 35-50, wherein a request is received from the computer at the server for the display of an online advertisement of a survey via a pop-up window).

iii. As per claim 27, the survey logic server provides the added computer readable instructions (See figures 1, 3B, column 1, line 65-column 2, line 20 and lines 45-65, column 5, lines 35-60, wherein the survey server provides the implementation instructions).

However, De Ment does not expressly disclose both a survey server and an ad server.

De Ment discloses a web-based system that contains a server and a survey server. The survey server handles the providing of both the advertisement and the survey. It would have been obvious to one of ordinary skill in the art at the time of the invention to include both an ad server and a server in order to increase the efficiency of the system by duplicating the parts for redundancy and speed. Duplication of parts is per se obvious. See column 2.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Winn (U.S. 6,901,424) teaches web-based survey that utilizes cookies to invite a user to take the survey.

Plantec et al. (U.S. 6,826,540) discloses browser cookies to track information about a potential respondent to a survey.

Smith et al. (U.S. 2002/0128898) discloses receiving a request for a survey and using supplemental data, such as cookie data, to determine the contents of the questions.

Hamlin et al. (U.S. 2004/0193479) teaches automating surveys over a network including launching the survey and parameters of the survey such as duration and number of surveys.

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Wilkins et al. (U.S. 6,868,389) teaches using cookies to track information about a survey participant.

“Dynamic Logic: An Online Research Company” (www.dynamiclogic.com) discloses building an internet strategy and measure the effectiveness of online communications by considering attitudinal and behavioral data and the profile of users.

Melillo (“Getting Personal”) teaches measuring the effectiveness of an online advertisement.

“24/7 Media Partners Exclusively with Dynamic Logic” (Business Wire) discusses the leading online research company of Dynamic Logic and how the company measures the effectiveness of advertisers’ online campaigns.

“Comet Systems Introduces Cometized Banner” (Business Wire) teaches banner advertisements and lifting the return on investment of these ads.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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August 30, 2005

Susanna Diaz
SUSANNA M. DIAZ
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